

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4728 OF 1991

DATE OF DECISION : FEBRUARY 27, 1996

For approval and Signature

THE HONOURABLE MR.JUSTICE M.S.PARIKH

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

Mr.Sunil K. Shah, Advocate for the petitioner  
Ms.Katha Gajjar, AGP, as instructed by Mr.R.J.Oza, Government  
Solicitor for Respondents.

CORAM : M.S.PARIKH, J.

DATE : FEBRUARY 27,1996

ORAL JUDGMENT :

The petitioner has complained of oral termination of her services with respondent No.2 in this petition under Article 226 of the Constitution of India.

2. The facts which have not been challenged by the respondents may briefly be stated :

The petitioner having a Degree of B.A. (Home Science) and Diploma in Home Science came to be appointed on stop gap adhoc basis on permanent vacant post of Instructor in Home Science way back in the year 1987. Even though the appointment was on the permanent vacant post of Instructor in Home Science

she was given part time appointment. She was teaching the subject of Home Science both, theory and practical, as per the time table fixed by the Head of the Department and she was paid Rs.15/- per hour i.e. Rs.11.25 ps. for lecture of 45 minutes and Rs.10/- per hour i.e. Rs.7.50 ps. per practical. She was given appointment from time to time with artificial breaks as particularised in the petition. She was getting round about Rs.1000/- to Rs.1200/- per month. It is her case that she was orally terminated by not continuing her after 1990 inspite of the fact that Junior Part Timers in the same subject were retained. The petitioner, therefore, wrote registered letter/application dated 8.6.1991 to the respondent No.2, but the respondent No.2 without considering the same replied by saying that the application could not be accepted. The petitioner has, therefore, challenged such an action on the part of the respondents as unconstitutional, illegal, malafide, arbitrary, unjust and unreasonable.

3. At the time of admission notice was issued and status-quo was granted as per order dated 19.7.1991. On 3.12.1991 following order was passed :

Rule.

It is stated on behalf of the petitioner that the petitioner at present is out of employment. She was formerly given part-time work which has also been discontinued and therefore the status-quo which has been ordered is, in fact operating against her. The petitioner was being given work from time to time as Instructor in Home Science. It is expected that the respondents will provide such part-time work or even consider the petitioner for regular appointment in accordance with the rules and regulations applicable to the post and that the pendency of this petition should not deter the respondents from giving work to the petitioner which she was already doing.

Matter to be listed for final hearing in February, 1992.

4. Today when the matter has been argued finally the attention of the learned A.G.P., as instructed by Mr.R.J.Oza, learned Government Solicitor was drawn to the aforesaid order passed by this Court. It is interesting to note that no Affidavit in Reply has been filed.

5. Under the aforesaid circumstances I have heard Mr.Sunil K.Shah learned Advocate for the petitioner and Ms.Katha Gajjar, learned A.G.P., as instructed by Mr.R.J.Oza, learned Government Solicitor for the respondents.

6. There are two salient features arising from the facts noted hereinabove. The first one is that the petitioner was given part time appointment on a permanent post although on adhoc basis and she continued accordingly for a long period of three years and on one fine morning she was orally discontinued from the service. The second feature of this petition is that the junior part timers in the same stream have been retained while discontinuing the petitioner. Under such circumstances the action of the respondents, respondent No.2 in particular, cannot be styled, but arbitrary. The petitioner has placed Reliance upon a decision of the Honourable Supreme Court in the case of Ratanlal & ors. V/s. State of Haryana, reported in AIR 1987 SC 478, a zerox copy whereof has been annexed to the petition right from the beginning. There the question which arose was whether it was open to the State Government to appoint teachers on an ad-hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation. The Apex Court observed that such ad-hoc teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy. These teachers who constitute the bulk of educated unemployed are compelled to accept these jobs on an ad-hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of 'ad hocism' followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is finally observed by the Apex Court that the State Government is expected to function as a model employer. It was, therefore, directed in that case that immediate steps to fill up the vacancy in accordance with the rules should be taken and teachers working on ad-hoc basis should be allowed to be retained on those posts till they are duly filled-up.

7. Another decision on which the petitioner's learned Advocate has placed reliance is one contained in the case of Shri Rabinarayan Mohapatra V/s. State of Orissa & ors., reported in JT 1991 (2) SC 82. In the background of the validation Act enacted by the Orissa Legislature the question with regard to artificial break in the service of the appellant was required to be dealt with. The petitioner there was appointed as Hindi teacher for a period of 89 days or till the candidate selected by the said Selection Board was made available. In between the spells of 89 days of work one day break was given. He was not paid the salary for the period of summer vacation during all the four years of his working. The teacher claimed regularisation before the Orissa High Court, which rejected the prayer holding that the petitioner there was not entitled to the benefit of

validation Act. In the back ground of such facts the Apex Court excerpted the observations of the earlier Bench in Ratanlal V/s. State of Haryana, reported in AIR 1987 SC 478. The same would deserve consideration in the facts of the present case. They have been briefly noted while dealing with the decision in Ratanlal's case (Supra).

8. So far as termination of the petitioner's service is concerned it is not in dispute that she has been orally terminated by not allowing her to work after September 1990. This is the crudest form of termination which could hardly have been adopted by a model employer like the respondents. In any case it cannot be stamped, but arbitrary. It has been submitted on behalf of the respondents that the petitioner being an adhoc employee could be terminated. However, this is no answer to the facts set out by the petitioner and briefly reproduced hereinabove. Such termination would also be in breach of Article 16 of the Constitution of India as the petitioner has come out with the positive case that Junior part timer has been retained while terminating her service. Hence in the facts of the case the impugned action/order of terminating the petitioner's service deserves to be set aside and consequential directions are required to be issued. Order accordingly with a direction that the petitioner shall be reinstated in service on same terms and conditions she was in service when she was terminated, within a period of eight weeks from the date of receipt of writ of this direction with continuity of service and 50 per cent of the back wages worked out on the basis of remuneration the petitioner was getting as part timer for the period between the date of petition and the date of reinstatement. She will not get any backwages from the date of termination till the date of petition. She will be continued in service till the regularly selected candidate to fill up the permanent post held by the petitioner is available. It would be open to the respondent to terminate the services of the part timer adhoc employee on the principle of LAST COME FIRST GO as and when regularly selected candidate/s is/are available. It will also be open to effect termination on the above principle in case there is no vacant post available or there is non-availability of requisite strength of students.

9. Rule made absolute in the aforesaid terms. No order as to costs. It will be open to the petitioner to make representation for regularisation of her service and as and when such representation is made, the respondents are directed to consider the same sympathetically, but in accordance with law.

